

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM № H400938

JONATHAN DAVIS, EMPLOYEE

CLAIMANT

vs.

CENTRAL MALONEY, INC., SELF-INSURED EMPLOYER,

RESPONDENT

**RISK MANAGEMENT RESOURCES,
THIRD PARTY ADMINISTRATOR**

RESPONDENT

OPINION & ORDER FILED 14 APRIL 2025

This claim was heard before Arkansas Workers' Compensation Commission Administrative Law Judge JayO. Howe on 29 January 2025 in Little Rock, Arkansas.

The claimant was represented by Mr. Mark Alan Peoples.

The respondents were represented by Friday, Eldredge & Clark, LLP, Mr. Guy Alton Wade.

STATEMENT OF THE CASE

A Prehearing Order was entered on 18 September 2024 and admitted to the hearing record without objection as Commission's Exhibit № 1. As outlined in that Order, the parties agreed to the following:

STIPULATIONS

1. The Commission has jurisdiction over this claim.
2. The self-insured employer/employee/third party administrator relationship existed at all relevant times, including on 26 January 2024, when the claimant allegedly sustained a compensable injury.
3. At the time relevant to this matter, the claimant earned an average weekly wage of \$1,107.24, which would entitle him to compensation rates of \$738 and \$554 per week for temporary total disability (TTD) benefits and permanent partial disability (PPD) benefits, respectively.
4. The respondents have denied this claim in its entirety.

ISSUES

1. Whether the claimant suffered a compensable injury to his left lower extremity by specific incident.
2. Whether the claimant is entitled to TTD benefits.
3. Whether the claimant is entitled to medical benefits.
4. Whether the claimant is entitled to an attorney's fee.

All other issues are reserved.

CONTENTIONS

The parties' contentions were incorporated by reference into the Prehearing Order from their prehearing filings. According to those filings, the claimant contends (1) that he sustained a work-related injury to his left knee on or about 26 January 2024; (2) that he is entitled to TTD from the date of injury until 25 May 2024; (3) that he is entitled to medical treatment related to his work injury; and (4) that he is entitled to an attorney's fee on controverted benefits.

The respondents contend that the claimant did not sustain a compensable work injury within the course and scope of his employment or while performing employment services.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole, including the evidence summarized below, and having heard testimony from the witness, observing his demeanor, I make the following findings of fact and conclusions of law under A.C.A. § 11-9-704:

1. The Commission has jurisdiction over this claim.
2. The stipulations as set forth above are accepted.
3. The claimant failed to prove by a preponderance of the evidence that he suffered a compensable injury by specific incident to his left lower extremity.

4. Because the claimant failed to meet his burden on his claim of a compensable injury, the remaining issues are moot and will not be addressed in this opinion.

SUMMARY OF THE EVIDENCE

As noted above, the Prehearing Order was admitted to the record as Commission's Exhibit No 1. The claimant was the only witness at the hearing. He submitted an exhibit that consisted of one index page and twenty-one pages of medical records. That exhibit was entered into the record without objection as Claimant's Exhibit No 1. The evidentiary record consists of the claimant's testimony and these two exhibits.

Claimant Jonathan Davis

The claimant testified that he has worked for the respondent-employer for 32 years. He was working as a warehouseman at the time of his injury. According to his testimony, his job duties included loading and unloading trucks and moving inventory and materials around the warehouse facilities with a forklift.

On the day of his injury, the claimant was moving a load of empty boxes from the warehouse to the facility's box crusher. It was towards the end of his shift on a Friday, and hauling discarded boxes out to be crushed was part of the usual cleanup work around that time. He described having to pass through a high-traffic area (with other forklifts coming and going) on the way out to the box crusher. Instead of moving on through the area or just waiting for the other forklifts to clear the area, the claimant backed his forklift out of the way and parked it in a side area. He then left the vehicle and walked away to ask a coworker, Lisa McFarland, about her plans for the weekend. On the walk back to the forklift, he struck his left knee against a metal object and fell. He was subsequently diagnosed with a left quadriceps tendon rupture and underwent surgical repair.

On cross-examination, the claimant confirmed that he was not making a delivery to his coworker's department, that her department was outside of the warehouse, and that she did not work at the box crusher. He testified:

Q: Okay. Now, the conversation you had with Ms. McFarland was not related to your job as a warehouseman, was it?

A: Correct.

Q: It had nothing to do with your job that day, did it?

A: Correct.

Q: And after you talked to her, you turned around and walked away, and that's when you ended up striking your knee, is that right?

A: Correct.

Q: You didn't hurt anything else, did you?

A: No.

Q: Now, if you had not gotten off your forklift, you had just sat there and waited for whatever to clear, you wouldn't have gotten hurt that day, would you?

A: Possibly not.

Q: Okay. It only happened whenever you got off and went to visit with Ms. McFarland, correct?

A: Correct.

Q: Now, after this event, you're on your way back, you ended up falling down. You ended up having to get help to get back on your fork truck, correct?

A: Correct.

Q: And instead of driving to the box crusher, you ended up driving back to the warehouse, didn't you?

A: Correct.

Q: So, you didn't even make the delivery you had intended to make at the time?

A: Correct.

[TR at 24-25.] The claimant also acknowledged that he was not supposed to be off the forklift and on the floor of Ms. McFarland's work area at the time that he hurt himself.

After returning to the warehouse, the claimant reported his injury and was taken for an initial medical evaluation. Shortly thereafter, he learned that his claim was being denied. The claimant continued to seek treatment on his own, utilizing his employee group health insurance. He seeks TTD benefits from the date of his injury until 25 May 2024.

ADJUDICATION

A compensable injury is defined, in part, as an accidental injury which arises out of and in the course of employment. A.C.A. § 11-9-102(4)(A)(i). However, a compensable injury does not include an injury "inflicted upon the employee at a time when employment services were not being performed." *Id.* §11-9-102(4)(B)(iii).

In *Haynes v. Ozark Guidance Ctr., Inc.*, 2011 Ark. App. 396, 384 S.W.3d 570, the Court of Appeals, citing *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008), explained:

Our supreme court has held that an employee is performing "employment services" when he or she "is doing something that is generally required by his or her employer." [...] The critical inquiry is whether the interests of the employer were being directly or indirectly advanced by the employee at the time of the injury. *Id.* at 377, 284 S.W.3d at 61. Moreover, the issue of whether an employee was performing employment services within the course of employment depends on the particular facts and circumstances of each case.

The facts in this claim are not in dispute. The question is whether the claimant was performing employment services *at the time that he was injured*. The Court of Appeals just recently affirmed the denial of benefits in a case where a school district employee had been driving his personal vehicle to and from an out-of-town meeting. He stopped on the side of the highway to render aid at the scene of an accident. A second accident then occurred at

the same scene, and he was struck and killed by projectile debris. The Court found that “he was not performing any activity inherently necessary for the performance of his job, nor was he directly or indirectly advancing his employer’s interest.” *Williams v. Malvern Sch. Dist. Ark. Sch. Bds. Ass’n.*, 2025 Ark. App. 208.

The claimant in the instant claim argues that his injury should be compensable because he was on the clock at the time of his injury and because his conversation with Ms. McFarland only lasted for about a minute. He suggests that *White v. Georgia-Pacific Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999) instructs a finding in his favor. In *White* our Supreme Court found an injury was compensable when an employee was injured during a smoke break. But even during his break, that employee was required to monitor his work area continually and to be immediately available as needed. The employer was found to have still benefited from the employee’s attention while he was standing by.

The Court in *Haynes* distinguished that scenario from a number of others where employees were not found to be performing employment services at the time of their injuries:

Hill v. LDA Leasing, Inc., 2010 Ark. App. 271, 374 S.W.3d 268 (holding that a truck driver, who left his truck at the loading dock and was injured while operating a vending machine, was not performing employment services; the truck driver at the time of his fall in the break room was not in a position to perform any of the duties required of him by his employer); *McKinney v. Trane Co.*, 84 Ark. App. 424, 143 S.W.3d 581 (2004) (affirming the Commission's finding that an employee who was injured when he jumped over tube-sheet buckets to get a soda on his way to a smoke break was not performing employment services; holding that the employer gleaned no benefit from the employee's activities on break); *Smith v. City of Fort Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004) (affirming the Commission's finding that a dump-truck driver, who hauled gravel waste, was not performing employment services when, while still on the clock, he injured himself loading gravel into his personal dump truck—a permitted activity; we rejected the employee's argument that his actions directly benefited his employer, holding that the activity must also be inherently necessary for the performance of his primary job); and *Harding v. City of Texarkana*, 62 Ark. App. 137, 970 S.W.2d 303 (1998) (holding that a 911 operator, who was injured on her way

to a smoke break when she tripped over a rolled-up carpet, was not performing employment services because the break was not inherently necessary for the performance of the job she was hired to do).

Here, despite the fact that the claimant was injured during the time and space boundaries of his employment, I do not find the employer's interests to have been advanced by the claimant's deviation from his job duties. He testified that he was tasked at the time with delivering a load of boxes from the warehouse out to a box crushing machine. That delivery was not completed, though, because the claimant stopped his forklift near a busy intersection, parked it somewhere out of the way and off the route between his warehouse and the box crushing machine, and then walked over to another department for a purely personal conversation with a coworker. He was hurt making his way back to the forklift.

A lark and a tarry, a frolic and a detour—however one might describe his walking away from a job duty to talk with a friend— it was certainly not required work activity. The respondent-employer derived no direct or indirect benefit from the claimant's off-task activities that resulted in his injury. Accordingly, I find that he has failed to prove by a preponderance of the evidence that he was performing employment services at the time of his injury. He, therefore, he has not shown that he suffered a compensable injury. Because he has failed to meet his burden on compensability, his claimed entitlement to associated benefits are moot and will not be addressed in this opinion.

CONCLUSION

Consistent with the Findings of Fact and Conclusions of Law set forth above, this claim for initial benefits is DENIED and DISMISSED.

IT IS SO ORDERED.

JayO. Howe
Administrative Law Judge